

half-yearly in the meantime; non-payment of which is the breach assigned (the principal not having become due); the defendant cannot plead payment of money into Court under 8 & 9 W. 3 c. 11, s. 8 (for the plaintiff has a right to judgment for the penalty, as a security for future breaches), nor under sec. 13 of this Statute (which only authorizes a summary application to the Court); but he may, under this section, plead, so far as regards the interest alone, a plea of *solvit post diem*, nor does it alter the case that part of the principal has been paid, *Hodgkinson v. Wyatt*, 13 L. J. Q. B. 73. And, on like principles, it should seem that a bond for the payment of money by instalments is also within this section, see *Bonafous v. Rybot*, 3 Burr. 1374.²⁷ But should the principal sum become due under the bond, in default of payment of interest at the times appointed, payment of it must be pleaded, *Marriage v. Marriage*, 1 C. B. 761, for the Statute contemplates the case of a payment that shall be a complete discharge of the security. However, in *Husband v. Davis* *infra*, Maule J. observed that that was a *very* special case. Bonds payable on a contingency when the contingency has happened are also within the Statute, *King v. England*, 9 M. & W. 333. But the defendant * cannot plead **669** that he *tendered* the money after the day, Bull. N. P. 171, because the Statute requires payment.

A plea of *solvit post diem*, as to part of the money mentioned in the condition; has been held not good on special demurrer, *Ashbee v. Pidduck*, 1 M. & W. 564, and see *Worthington v. Wigley*, 3 Bing. N. C. 454; however, in *Husband v. Davis*, 10 C. B. 645, it was held that the defendant might plead, as to part, payment *post diem and acceptance in satisfaction*; at any rate, it is good after verdict. In *McCullough v. Franklin Coal Company*, 21 Md. 256, it was held also, that a plea, setting out an agreement to compromise a suit pending in the Court of Appeals for valuable considerations in satisfaction of the plaintiff's judgment, and the performance of all the conditions, including payment of the money agreed to be paid, by the defendant, was good, *by way of accord and satisfaction*, to a *scire facias* on the judgment.²⁸ It appears also from *Blackburn v. Beall*, 21 Md. 208, that a plea of payment and satisfaction of a judgment, by certain services rendered to and valuable considerations received by plaintiff from defendant, is good to a *scire facias* on such judgment; and that upon a plea of payment and discharge, an acquittance, in the above terms, though not under seal, is admissible in evidence; such pleas being informal pleas of payment, and good enough under the Code. Where an action is brought for the penalty of any bond, bill, covenant or contract with penalty, the jury may, under the direction of the Court, upon the plea of payment or performance of the conditions or terms of the contract, ascertain by their verdict what sum of money is really and justly due to the plaintiff, and upon such finding judgment shall be entered by the Court for the penalty, to be released upon payment of the sum so found due, interest

²⁷ But see *Preston v. Dania*, L. R. 8 Ex. 19; *Tuther v. Caralampi*, 21 Q. B. D. 414; *Gerrard v. Clowes*, (1892) 2 Q. B. 11.

²⁸ As to the plea of accord and satisfaction, see cases in note 26 *supra* and *Herzog v. Sawyer*, 61 Md. 344.